

SATELLITE NETWORK TELEVISION

Factsheet on Unserved Households and Satellite Delivery of Network Broadcast Stations

Why is my satellite carrier terminating my network service?

Satellite carriers license the copyrights to network broadcast television programming under the terms and conditions of the Satellite Home Viewer Act. Satellite carriers can only obtain the license for network stations if the subscriber they are providing service to resides in an "unserved household." To avoid liability under the copyright laws, your carrier must determine to its satisfaction whether or not you reside in an "unserved household" and the carrier can therefore obtain a copyright license to provide you with service of network stations. Your carrier has apparently determined that you do not, or likely do not, reside in an "unserved household."

There are several factors that may have led your satellite carrier to this conclusion. Lawsuits have been brought by network broadcasters against certain satellite carriers alleging that network stations are being provided to subscribers who do not reside in an "unserved household." Your loss of service may be the result of a judicial determination entered against one of these satellite carriers. Another reason could be that one or more of your local network affiliate stations have contacted your satellite carrier and alleged that you do not reside in an "unserved household." Your carrier may be terminating your service in response to these challenges.

In each of these cases, your satellite carrier has made a business decision that you are not, or may not, be eligible for network service under the copyright license granted satellite carriers by the Satellite Home Viewer Act.

What role did the Library of Congress, the Copyright Office, or the Federal Communications Commission play in the decision to terminate my network service?

The Library of Congress, the Copyright Office, and the Federal Communications Commission played absolutely no role in terminating your network service, or in the lawsuits that require service be terminated to many subscribers. The decision to terminate your service was solely that of your satellite carrier, not a federal agency.

What is the Satellite Home Viewer Act?

Satellite carriers provide their subscribers with television programming that includes both origination programming (such as ESPN, A&E, HBO, etc.) and broadcast programming. The broadcast programming provided by satellite carriers comes from over-the-air television stations which include superstations and network stations. In order to retransmit superstations and network stations to their subscribers, satellite carriers must license all the programming broadcast by those stations which is under copyright protection and is the private property of the copyright owners of those programs.

In 1988, Congress passed a law, the Satellite Home Viewer Act, which created a government-mandated license that allows satellite carriers to clear the copyrights to all broadcast programming without having to negotiate private licenses with individual copyright owners. The license applies to all superstations that satellite carriers provide, but is limited for network stations to subscribers who reside in an "unserved household."

What is an "unserved household?"

Section 119(d)(10) of title 17 of the United States Code¹ defines an "unserved household" as follows:

The term "unserved household," with respect to a particular television network, means a household that —

(A) cannot receive through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

Thus, a subscriber resides in an "unserved

household" if, with respect to a network station (ABC, CBS, Fox, etc.), the subscriber cannot receive the nearest local network affiliate station off-the-air using a conventional rooftop antenna, and has not subscribed to cable within the previous 90 days. A subscriber may be an "unserved household" with respect to one network station, but not another. An "unserved household" is typically a home located in a rural section of the country far away from a network affiliate station. This is not always the case, however, because the Satellite Home Viewer Act allows satellite carriers to use the statutory license to retransmit network stations to subscribers in urban areas of the country, provided that they do not receive a signal of the local affiliate of grade B intensity using a conventional rooftop antenna and have not subscribed to cable within the previous 90 days.

What is a network signal of grade B intensity, and how do I know if I get one?

Grade B is a measurement of the strength of an over-the-air television signal. The regulations of the Federal Communications Commission prescribe the signal strength levels that amount to grade B intensity, which vary according to a particular station's over-the-air channel number. See section 73.683(a) of title 47 of the Code of Federal Regulations.¹ Whether a household receives an over-the-air signal of grade B intensity of a particular network station depends upon a variety of factors, including the distance of the household from the transmission tower of the network station, the topographical features between the transmission tower and the receiving rooftop antenna, and atmospheric conditions.

When the Satellite Home Viewer Act was renewed by Congress in 1994, the satellite and broadcast station industries were supposed to agree to an objective test to determine when a household received an over-the-air signal of grade B intensity. No agreement, however, was reached, and there is no definitive means of determining when a household receives a signal of grade B intensity from a local network affiliate station. The Copyright Office issued a report in 1997 recommending that Congress amend the Satellite Home Viewer Act and eliminate the grade B signal standard. No Congressional action has been taken on the recommendation.

¹ The United States Code is available at most public libraries throughout the United States, as well as via the Internet.

² Like the United States Code, the Code of Federal Regulations is available at many public libraries and via the Internet.

It is important to note that a signal of grade B intensity is not correlated with the quality of the television picture that a particular household receives. It is possible that a household that receives a signal of grade B intensity at its rooftop antenna does not receive a good quality picture. This may occur due to the quality and condition of the receiving equipment, as well as the topographical features surrounding the household. Picture quality, therefore, does not necessarily correlate with whether a household receives a signal of grade B intensity.

What caused the termination of my network service?

Recently, a group of network broadcasters filed a copyright infringement suit against a satellite carrier charging that it had violated the provisions of the Satellite Home Viewer Act by providing network service to “served” households. The broadcasters asked the federal district court to issue a preliminary injunction preventing the satellite carrier from continued network service to “served” households. The district court agreed with the broadcasters’ position and issued the preliminary injunction. As a result of this decision, many subscribers who previously received network signals from their satellite carrier are likely to have their network service terminated with respect to one or more network stations. The court did not specify how a satellite carrier is to determine whether a particular subscriber resides in a “served” household. How satellite carriers choose to terminate service, or deny service to future customers, again depends upon the business practice and decisions of each satellite carrier.

Can the Federal Communications Commission or the Copyright Office give me back my network satellite service?

No. The decision to provide a subscriber with network service is solely that of the

satellite carrier. There is no governmental agency or body that will make these determinations, or grant special permissions or “waivers.” Whether a satellite carrier provides a particular subscriber with network service depends upon whether the carrier is satisfied, according to its own business practices and the law, that the subscriber resides in an “unserved household.”

Can I receive network service for my RV?

Many owners of recreational vehicles (“RVs”) have satellite dishes for their RVs. Whether or not a satellite carrier can make use of the statutory license created by the Satellite Home Viewer Act depends upon whether the RV is an “unserved household.” RVs are, of course, mobile in nature, and their ability to move affects their status as an “unserved household.” For example, an RV that cannot receive an over-the-air signal of grade B intensity may move into an area where such reception is possible, perhaps without the knowledge of the RV’s owners. The Satellite Home Viewer Act does not make provision for the special circumstances of RVs. Whether or not an individual satellite carrier will provide an RV with network stations depends upon that carrier’s assessment of the RV as an “unserved household.”

What can I do if my satellite carrier won’t provide me with network service?

There is not a great deal that can be done if a satellite carrier decides to terminate or deny service of network signals to a particular subscriber. Because business practices among the carriers vary greatly, subscribers may wish to contact a variety of carriers to determine whether any of them are able to provide network service.

Some subscribers have hired engineers, at their own expense, to measure the signal strength of network stations at their conventional rooftop antennas to determine if

they are of grade B intensity. Some satellite carriers may accept the results of these tests; however, there are no guarantees.

Will the law change?

The Satellite Home Viewer Act is slated to expire on December 31, 1999. If the Act expires, satellite carriers will be required to negotiate private licensing agreements with copyright owners of broadcast programming if they wish to continue to retransmit superstations and network stations to their subscribers. The satellite industry is seeking a permanent extension of the Satellite Home Viewer Act. There are currently two bills, S. 1720 and H.R. 3210, pending before Congress that would extend the Satellite Home Viewer Act, as well as make changes to its current terms and conditions. Both of these bills encourage satellite carriers to retransmit local network stations to satellite subscribers as a means of avoiding the problems associated with the “unserved household” limitation.

If, after reading the Factsheet, you still need to speak with someone in the Copyright Office, you may call 202-707-5932, press 4 to bypass the menu, and leave your name and telephone number. A Licensing Division representative will call you.